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MAIN CHARACTERISTIC FEATURES OF THE CRIMINAL CODE OF UKRAINE OF 2001

(GENERAL PART)

The new Criminal Code of Ukraine was approved on April 5, 2001, and became effective on September 1, 2001. Until then, the CC approved on December 28, 1960 and put into effect on April 1, 1961 operated in Ukraine. Since then, quite a few laws seriously amending and modifying the latter was approved. The majority of them were passed rather during the post-Soviet, not Soviet, time due to significant changes in the political and economic regime of Ukraine and the full-scale state sovereignty it gained.

The new CC is valued mainly positively by the People's Deputies of Ukraine, scientists, officers of law enforcement agencies, which deem it based on the Constitution of Ukraine and universal principles of humanism and legitimacy, and believe its putting into effect to improve in general the situation in the society, create conditions for normal enforcement and development of Ukraine as a social and constitutional state.

While valuing the 2001 CC in general, we could hardly regard it as a revolutionary development. The new CC is a direct successor of the 1960 CC that was operating in Ukraine for about forty years; at the same time its approval reflects an evolutionary process in the development of the criminal law of Ukraine, maintains its strong points, as well as, unfortunately, shortcomings.

The truly revolutionary developments in the Ukrainian criminal law occurred earlier, in the process of improvement of the 1960 CC in early 90-th. Exactly during that period the focus transferred from struggle against private entrepreneurial initiative, regarded as criminal, towards the protection of entrepreneurial activity, as preconditioned by the development of the economy; articles aimed at protection of a single ideology monopoly were removed; and there was a striving for unification of liability for offences against property (though such idea found it final realization only in the 2001 CC). The new CC of Ukraine, put into effect in 2001, can be characterized first and foremost by its continuity. It sets forth basic norms and institutions by maintaining and developing those of earlier criminal laws of Ukraine.

The new Criminal Code maintains its traditional name and titles of its basic structural parts - General Provisions and Special Provisions. The norms and institutions are specified within the same sections as in the previous CC.

Also, basic terms of the 1960 CC are shown in the 2001 CC. At the same time, in general the meaning of terms and phrases containing such terms is preserved the same as in the 1960 CC. The scope of criminalization of social relations has not changed significantly. Criminal liability for various socially dangerous acts is strictly differentiated. The institution of acquittal of criminal liability as set forth by certain articles of the Special Provisions of the CC is preserved, on condition of positive post-criminal performance.

Though the new CC maintains basic features of its predecessor - the 1960 CC of Ukraine - there are no reasons to regard it as a new wording of the effective legal laws. Upon comparing the two codified normative acts one can see that both the form and the content of the new criminal law changed significantly.

Statutory innovations constitute over four-fifth of the Special Provisions of the 2001 CC. In addition to reflecting certain historical tendencies of its construction, the system of the Special Provisions as proposed in the new CC has reflected the system of social relations and social values which were created in Ukraine during the initial ten years of its formation as an independent constitutional state, and which are subject to protection by the criminal law.

An important feature of the Special Provisions of the new CC is extension of the number of norms encouraging active penitential upon committing an offence. Obviously, development of the doctrine of encouragement in the Special Provisions of the CC is consistent with the idea of humanization of the Ukrainian laws. Within the context of sanctions as specified by the norms of the Special Provisions, a constitutional provision regarding the humanization of the correctional system was reflected. All sanctions set forth by the Special Provisions are construed according to the scheme 'from minor penalties to major', and, as a rule, provide three or more alternatives penalties instead of two. Penalties for economic, military and undeliberate offences are significantly mitigated.

Also, significant amendments are entered into General Provisions of the CC. These are amendments related to such institutions of the General Provisions of the CC as the offence- namely the re-conceptualization of offence, its definition by legislator, classification of offences. Also, the institutions of penalties, and exemption from criminal liability and penalties changed significantly.

Being the product of legislator's work, the new CC also incorporates the results of legal research both in Ukraine and abroad. At the same time we should note that it shows and incorporates the European norms and standards set fort in such basic documents as the European Convention for Protection of Human Rights and Fundamental Freedoms, the European Convention for Prevention of Torture and Inhuman or Degrading Treatment or Punishment, Declaration of Freedom of Communications and Information, minimum standards in the sphere of voting rights developed by the Bureau for Democratic Institutions and Human Rights (BDIHR), OSCE in cooperation with the International Institute for Democracy and Democratic Election Assistance (DEA), primary sources in the sphere of electoral rights, specifically the Unified Declaration of Human Rights, the International Pact for Political and Civil Rights, the Charter of Paris for new Europe, the OSCE Summit (1990) and the Act of the Copenhagen Conference for Human Measurement.

The General Part of the Criminal Code of Ukraine (hereinafter - "Criminal Code")consists of 15 chapters.

Chapter I is titled "General Provisions" and includes 2 articles (Article 1 and 2). Article 1 of the Criminal Code is titled "Objectives of the Criminal Code of Ukraine". This Article defines the main objectives, which the Criminal Code is called to settle, in particular, legal protection of the rights and freedoms of the human being and citizen, property, public order and public safety, the environment, the constitutional order of Ukraine against criminal encroachments, to secure peace and safety of mankind, and also to prevent crime.

The main target (function) of the criminal law - protection. The priority target of the Criminal Code is protection of the personal values of a person (life, health, will, dignity

and honour) his/her rights and freedoms against criminal encroachments. The priority of this target is established by the Constitution of Ukraine, Article 3 of which envisages, that "A person, his/her life and health, dignity and honour, immunity and safety shall be recognised in Ukraine as the highest social value. Rights and freedoms of a person and their guarantees define the essence and direction of the State's activity... Strengthening and guaranteeing of rights and freedoms of a person shall be the main duty of the State."

Article 2 of the Criminal Code is devoted to definition of the grounds of the criminal liability. According to this normative provision commission by a person of a socially dangerous action that has formal elements of a crime as envisaged by this Code gives grounds for criminal liability. A person is deemed innocent in commission of a crime and may not be criminally punished until his /her guilt is proven under the legal order and established by the Court 's verdict of "guilty". Against no one criminal proceedings may be instituted more than once for one and the same crime.

The new Criminal Code like the Criminal Code of 1960 does not define the term "criminal liability" unless this issue is a central one in the criminal law. The Criminal Code uses this definition, firstly, as a synonym to a sanction of the relative legal-criminal norm. The criminal liability in this understanding can be defined as envisaged by the Criminal Code limitation of rights and freedoms of a person, which he/she can undergo in the future in the event of commission a crime by him/her. The criminal liability as a sanction exists from the moment, when the corresponding law on criminal liability enters into force, and up to the moment such law becomes ineffective (except for events of retrospective operation of such a law in time).

Secondly, legislator understands the criminal liability as a real application of the State's compulsion towards a person, that committed a crime. Such compulsion in a number of events can be limited only by conviction of a guilty person, which is reflected in the Court's verdict of "guilty" (for example, paragraphs 4,5 of Article 74 of the Criminal Code); in other events this compulsion is reflected in conviction of a person, that is united with imposing a concrete measure of punishment, from the real serving of which he/she nevertheless is discharged (for example, paragraph 1 of Article 75 of the Criminal Code). A typical manifestation of a criminal liability is considered to be conviction of a guilty person, imposing him/her a measure of punishment and serving by him/her of this punishment.

Taking into account that the term "criminal liability" is used in these two definitions in the effective Criminal Code, - as a sanction of the corresponding legal-criminal norm and as an actual application of the State's compulsion towards the person, that committed a crime, then one can, therefore, determine the general definition of the criminal liability as limitation of rights and freedoms of a person guilty in commission of a crime, which is foreseen by the Criminal Code and is used by a Court and also by special State bodies, authorised to execute the Court's verdict of "guilty".

Chapter II is titled "Law on Criminal Liability" and it includes 8 articles (Articles 3-10), which contain main theoretical and practical provisions of the general part of the criminal law. The Ukrainian legislation on the criminal liability is the Criminal Code. The Criminal Code is the system of national legislative norms of Ukraine and also integrated in them provisions of international treaties, that contain the norms of the criminal law. This is the normative act, adopted by the Verkhovna Rada (Parliament) of Ukraine, which contains a system of interconnected and inter-coordinated legal-criminal norms.

Application of the law on criminal liability by analogy is prohibited. Prohibition of analogy shall be considered in that understanding that the gaps of the criminal law, which

concern the establishment of a criminal character of an action, can be filled by the legislator only. However, what concerns the issues of the criminal law, regulated by the law but yet not fully, application of the law by analogy is deemed to be permissible. Most frequently it happens in the course of interpretation by analogy of terms and definitions of the criminal law - here analogy borders on wide interpretation of the criminal law. Application of analogy in General Part took place also in the Criminal Code of 1960, it can not be avoided in the course of implementation of the new Criminal Code. Thus, as for the Criminal Code of 1960, analogy was used in the process of assembling of heterogeneous punishments, while cumulating sentences in special cases; as for the Criminal Code of 2001, one of examples of application of its norms by analogy is as follows: general principles of imposing of a punishment are established by the law, and general principles of imposing of compulsory measures of educational character for underaged are not determined. In this event one shall apply the general principles of imposing of a punishment. One just can not do without analogy in the General Part, this or that way it is being applied and will be applied. At the same time analogy shall not be permissible if it is connected with establishment of a circle of actions, for which the criminal liability arises, with aggravation of a person's state. Prohibition of analogy in the criminal law in the process of establishment of a criminal character of an action shall be spread not only over articles of the Special Part of the Criminal Code, and also over articles of other laws and normative acts, if application of the Criminal Code is connected with their application when there are blanket dispositions of articles of the Special Part of the Criminal Code.

Other articles of this Chapter (Articles 5-10) regulate the issues of effectiveness of the law on criminal liability in time as for the crimes, committed on the territory of Ukraine, the crimes, committed by citizens of Ukraine, by stateless persons and foreign nationals outside the territory of Ukraine, and also the legal consequences of conviction of a person outside Ukraine and the issues of extradition of a person accused of a crime and a person convicted of a crime.

A range of events of retroactive operation of law on criminal liability in time (Article 5) is widened in the new Criminal Code. Such effect have not only the laws, which repeal the criminality of an act or mitigates its punishability, but also the laws, which in general mitigate criminal liability of a person. Alongside it is mentioned that the law shall be retroactive to persons serving their sentence or those who have completed their sentence but have a conviction.

The real national principle of operation of the law on criminal liability in space is introduced. According to it foreign nationals and stateless persons, not residing permanently in Ukraine, who have committed crimes outside Ukraine, shall be criminally liable in Ukraine under this Code in such cases as provided for by the international treaties, or if they have committed any of the special grave crimes against rights and freedoms of Ukrainian citizens or interests of Ukraine (Article 8).

For the first time in the legislation of Ukraine the legal force of the verdict of "guilty", passed by a Court of a foreign state, is recognised in the course of qualification of a new crime, imposition of a punishment, discharge from criminal liability or punishment (paragraph 2 of Article 9).

Chapter III of the Criminal Code - "Crime, its Types and Stages" is devoted to the institute of a crime and consists of 7 articles (Articles 11- 17), in which the definition of a crime, classification of crimes, stages of commission of a crime are given, as well as

issues of criminal liability for an unconsummated crime and voluntary renunciation in an unconsummated crime are regulated.

The legislator names the following elements of a crime: a crime shall mean a socially dangerous culpable action (act or inaction), committed by an offender (a subject of a crime - a physical person that has concrete, foreseen by the Criminal Code, characteristic features). In paragraph 2 of Article 11 the definition of a less significant action is presented - that is an act or inaction, which formally may have elements of any action under the Criminal Code, but it neither did nor could cause considerable harm to any natural or legal person, society or the state. If it is established that there are elements of insignificance in the action, the case shall be closed due to the absence of the formal elements of a crime.

Depending on the degree of gravity the following classification of crimes is envisaged by the Criminal Code (Article 12): a crime of minor gravity (is punished by deprivation of freedom for a term up to two years or a more lenient penalty); a crime of medium gravity (is punished by deprivation of freedom for a term up to five years); a grave crime (is punished by deprivation of freedom for a term up to ten years); a crime of special gravity (is punished by more than ten years of deprivation of freedom or a life sentence).

The Criminal Code prescribes liability for the consummated crime. The legislator defines such stages of a crime as preparation for crime and a criminal attempt, which in its turn can be consummated and unconsummated. Preparation to commit a crime of minor gravity shall not give rise to criminal liability.

The new Criminal Code determined the definition of voluntary renunciation in an unconsummated crime, which is the ground of exclusion of the criminal liability for an unconsummated crime, and thus eliminated a serious gap in the criminal law of Ukraine. At the same time the following norm was left in the Criminal Code - a person who voluntarily renounced to consummate a crime shall be criminally liable only if the action actually committed by that person comprised formal elements of other crime (paragraph 2 Article 17).

Therefore, a person who voluntarily renounced to consummate a crime shall not undergo the criminal liability for preparation for the crime or attempt to commit the crime, from consummation of which he/she renounced. But if in the action (preparation for crime and a criminal attempt) committed by a person before the voluntary renouncement from the crime there are formal elements of other crime, the criminal liability shall rise for this encroachment, and the criminal liability shall not rise for the voluntary renounced crime.

Chapter IV is titled "Criminally liable person (subject of a crime)" and consists of 5 articles (Articles 18 - 22). Due to the Criminal Code of 2001 (as well as to that of 1960) a subject of a crime shall mean only a physical person (as known, in the criminal legislation of certain countries the criminal liability can undergo a legal entity as well). The other obligatory features of a subject of a crime is his/her age and jurisdiction.

Subject of a crime is an obligatory element of formal elements of a crime. Formal elements of a crime is considered to be an aggregate of features, that characterise due to the criminal law a certain socially dangerous action - a crime. Formal elements of a crime comprise an object of a crime, objective part of a crime; a subject of a crime, subjective part of a crime. If an object, objective and subjective parts of a crime exist for some short period of time - only in the moment of commission of a crime, then the subject in most cases remains unchangeable (from the juridical point of view) up to the moment of investigation of a criminal case and consideration in the court. In general, a subject of a crime can be

deemed a main element among the formal elements of a crime, as the subject itself commits culpable, illegal, socially dangerous actions that encroach on the object of a crime.

Persons who have reached the age of 16 years before the commission of a crime shall be criminally liable. The Criminal Code establishes also a lower limit of age - 14 years for commission of a number of crimes, full list of which is found in the paragraph 2 of Article 22. A list of crimes, liability for which rises from 14 years is significantly widened in the Criminal Code of 2001 in comparison to the Criminal Code of 1960. It includes crimes, foreseen in 37 articles (the previous Criminal Code foresaw 28 articles) that are contained in thirteen chapters of the Special Part of the acting Criminal Code. All these crimes are premeditated (though their qualified kinds in some cases are characterised by an imprudent form of guilt to consequences), approximately half of them are crimes of special gravity, others - are grave crimes and crimes of medium gravity and only one - hooliganism, is the crime of minor gravity.

Besides age a subject of a crime has such a feature as justiciability. A person who was aware of and could realise and control his (her) acts (inactions) at the time of a crime shall be recognised justiciable. A person who, at the time of commission of an action was in the state of non jurisdiction, i.e. could not realise or could not control his (her) acts (inactions) in consequence of a chronic mental disease, or a temporary mental disorder, or feeble-mindedness, or any other morbid mental condition, shall not be criminally liable. A person who committed a crime in the state of jurisdiction, but lapsed, prior to the making of a judgement, into a mental disease also shall not be criminally liable. Such persons if there are grounds for it (opinion of court-medical expertise on the fact such person has a concrete mental disease) are recognised by the court to be non-justiciable, such person may be subjected to compulsory medical measures upon the decision of a court. If a person committed a crime being in the state of jurisdiction, and later he/she was considered by the court to be non-justiciable, such person may be subjected to compulsory medical measures upon the decision of a court and may be criminally liable upon recovery.

Article 20 of the new Criminal Code that prescribes partial jurisdiction is an innovation. If by establishment of person's non-justiciability at the time of commission of by him/her a socially dangerous action, foreseen by the Criminal Code, the issues of absence of the person's guilt , a subject of a crime itself and the grounds for institution of criminal proceedings against him/her are being considered, then by recognition of a person to be under partial jurisdiction only the issues on possibility to mitigate a punishment for the crime committed by him/her and application towards him/her compulsory medical measures are to be considered by the court.

There also remains the provision that a person who committed a crime in a state of intoxication resulting from the use of alcohol, narcotic, or any other intoxicating substances shall be criminally liable.

General features of a subject of a crime are peculiar to all kinds of formal elements of a crime, thus the legislator, as a rule, does not points out these features in concrete cases. However, in a certain number of criminal law norms, additional features are foreseen besides these features. This allows to speak on special subject of a crime. As it is prescribed in paragraph 2 of Article 18 of the new Criminal Code, a special subject of a crime shall mean a physical justiciable person who has committed a crime at the age of criminal liability may rise, if the subject of that crime may only be a certain person. One of classifications of special subjects in the theory of the criminal law is such, due to which

they define: 1) legal-state position of a person; 2) official position, special features of the activity being conducted; 3) demographic features.

Chapter V is titled "Guilt and its Forms". It consists of 3 articles (23 - 25), in which definition of a guilt is given. Guilt shall mean a mental stance of a person in regard to the performed act or inaction. Under this Criminal Code it is expressed in the form of intent or recklessness. An intent may be direct or indirect (eventual), recklessness also shall be subdivided into criminal self-assurance and criminal negligence.

Chapter VI - "Complicity" consists of 6 articles (Articles 26 - 31) and envisages many legislative novelties - firstly, the definition of complicity the wilful co-participation of several subjects of a crime in commission of an intended crime; secondly, types of accomplices - organiser, abettor and accessory, together with the principal offender, shall be considered accomplices in a crime. The Criminal Code foresees cases of voluntary renunciation to commit a crime. But this issue is not the very novelty mentioned above. An extremely important moment is the following one - such forms of complicity as commitment of a crime by a group of persons upon prior conspiracy, by an organised group and criminal organisation found their legislative regulation and definition. With adoption of the new Criminal Code Ukraine made a n important step to the actual counteraction against organised crime. It's especially should be mentioned that in the new Criminal Code the clear-cut definition of the terms "an organised group" and "criminal organisation" is provided - definition by the Code of three participants of a crime as a minimum number for an organised group and criminal organisation takes into account modern theories of psychology of groups and legislative norms of many countries (for example, Italy, Germany, Romania), international legal acts.

For example, the UN Convention on transnational organised criminality (adopted on 5 November 2000) in its Article 2 defines the organised criminal group as a srtucturally shaped group numbering three and more people, that exists during a certain period of time and conducts concerted actions with the aim of commission of one or a number of serious crimes, recognised as such by this Convention, to receive directly or by means of mediation financial or other financial reward.

Recognition of participation in the activity of a criminal organisation as a concrete crime (Article 255 of the Criminal Code) is also a strong and effective means of counteraction against the organised criminality. At the same time an encouraging norm is prescribed by the Code (paragraph 2 Article 255) - a person, other than an organiser or leader of a criminal organisation, shall be discharged from criminal liability, if he (she) has voluntary reported the creation of the criminal organisation or his (her) participation in it, and effectively assisted in uncovering this organisation. The similar encouraging norms are a part of legislation of other countries (for example, Italy, United States) and they proved to be effective.

Chapter VII which is titled **"Repetition, cumulation of crimes and recidivism"** consists of 4 (four) parts (articles 32 -35) and legally consolidates a theoretical institute of the general part of the criminal law - an institute of plurality of crimes. Plurality of crimes is a kind of socially dangerous behaviour of one and the same person, which being joint with other circumstances creates two or more separate corpus delicti, everyone of which having an independent legal criminal significance, in one or other measure influences on the essence and volume of cumulated criminal liability of a person. In the acting Criminal

Code plurality of crimes finds its reflection not directly, but in a more concrete manifestation. The more typical manifestations are as follows - forms of plurality of crimes - are earmarked by the legislator: repetition, cumulation of crimes and recidivism. Repetition, cumulation of crimes and recidivism are taken into account in the process of qualification of crimes and imposition of punishments, in the process of consideration of an issue of possibility to discharge from criminal liability and punishment.

Chapter VIII - "Circumstances Excluding Criminality of an Action" consists of 8 articles (Articles 36-43). This Chapter was significantly modified and amended in comparison with the previous Criminal Code of 1960. Paragraph 3 of Article 27 of the Constitution of Ukraine foresees that every person has the right to protect his/her life and health, life and health of other people against the illegal encroachments. And paragraph 4 of Article 41 of the Constitution of Ukraine guarantees that no one shall be unlawfully deprived of the right off property. The everyday life frequently creates such circumstances for people, when it is necessary to prevent damage to interests safeguarded by the law by means of inflicting of damage to any other interests that are also secured by the law. Only the cases of infliction of damage not to personal but other rights and interests secured by the law, when the aim of causing the harm is prevention of damage shall undergo the legal criminal assessment. The similar legal criminal situations shall be considered with the help of application of norms of the general part of the criminal law of Ukraine, in particular, Article 36 and article 39 of the Criminal Code - necessary defence and extreme necessity. There is a norm on apprehension of a person that committed a crime in the Criminal Code (Article 38). These circumstances that exclude criminality of an action are traditional for the criminal law of Ukraine. The novelties of the new Criminal Code are the legal securing of such circumstances as - alleged defence, physical or mental coercion, obeying an order or a command, an action connected with risk, undertaking a special mission to prevent or uncover criminal activities of an organised group or criminal organisation. The Criminal Code of 1960 did not mark out these circumstances in the capacity of independent ones, though they gained substantiation and scientific analysis on the theoretical level. In some cases, when there certain factors exist, such circumstances exclude criminal liability, and in some cases - there are circumstances that mitigate the punishment, and shall be obligatory taken into account by the court while the punishment is being imposed.

Chapter IX "Discharge from Criminal Liability" include 6 articles (Articles 44 - 49) in which, firstly, legal grounds and procedure for discharge from criminal liability are foreseen - a person, who committed a crime, shall be discharged from criminal liability under the condition there are concrete grounds prescribed by this Code. In the Criminal Code such grounds for discharge from criminal liability are remained - in view of admission by bail, due to a change of situation, due to limitation period, amnesty. But at the same time the Criminal Code envisages a number of non-traditional for national law grounds for discharge from criminal liability: effective repentance, reconciliation of the offender and the victim.

In a number of cases reaching of such a target of the Criminal Code as prevention of crimes is possible without institution of criminal proceedings against a person, that committed a criminally punishable action. This concerns the institute of discharge from criminal liability, in which the desire of the State to effectively and efficiently conduct the fight against criminality without application of a punishment and in general without passing

by the court a judgement is being realised. In this institute of the criminal law the principle of economy of criminal repression, humanism and individualisation of liability is simultaneously realised. Discharge from criminal liability is the realised in accordance with criminal and criminal-procedure laws refusal of the State in the capacity of a relative court from application of measures of legal criminal character towards persons who committed crimes.

Chapter X - "Punishment and its Types". This is one of the most voluminous Chapter of the General Part of the Criminal Code which consists of 15 articles (Articles 50 - 64).

Punishment is a historically changeable institute of the criminal law, corresponding to this or that social system, main political and legal views or interests of the main social groups of the society, and also its ethical level.

In the modern criminal law of Ukraine punishment is considered to be a coercive measure imposed in a judgement of court on behalf of the State upon a person found guilty of a crime. It lies in the fact that the sentenced person incurs certain losses - the foreseen by the criminal and criminal-procedure legislation restrictions of his/her rights and freedoms. Punishment is aimed not only at penalising but also reformation of sentenced persons and prevention of further crimes by both the sentenced and other persons and causes conviction of the guilty.

Punishment is one of important legal criminal institutes, due to which to great extent effectiveness of criminal law norms is being reached. When characterising the new system of punishment it is necessary to define the following four moments: 1) the new Criminal Code fully refuses from the death penalty as a kind of punishment. Application od the death penalty was recognised by the Constitutional Court of Ukraine to be unconstitutional; 2) the new Criminal Code refused from two other types of punishment that were foreseen by the Criminal Code of 1960, in particular, from public reprimand and deprivation of parent's rights; 3) the system of punishments in a new Criminal Code is amended by four new types of punishment, in particular, community service, arrest, limitation of freedom, life deprivation of freedom; 4) the new Criminal Code does not establish the duty of a court to define a type of a correctional institution where persons sentenced to deprivation of freedom shall serve their sentence. This issue is regulated by the criminal - executive legislation.

The system of punishments established by the effective Criminal Code is characterised by the significant widening of a number of penalties, not connected with deprivation from liberty. This change is explained by the impact of economic, political, social-psychological and other factors, existence of which affects the whole sphere of imposition and application of penalties and shall be taken into account and assessed in adequacy with social needs. From this point of view the role and place of penalties that are not connected with deprivation of liberty, among other means of fight against corruption, their effectiveness and possible consequences are very important.

In Article 51 of the Criminal Code the system of punishments is presented -the established by the criminal law obligatory for the court list of punishments that are placed in it due to the level of gravity - from less to more severe.

Widening of the list of punishments in comparison to the Criminal Code of 1960 guarantees wider possibilities for the court to choose such measures that will be corresponding to the level of danger of the committed crime and of the person who committed it; it will promote realisation of the principle of individualisation of the

punishment, increase of its effectiveness, conduct of a more flexible legal criminal politics as a whole.

The following types of punishment may be imposed by a court on persons convicted of crimes:

(1) fine;
(2) revocation of a military or special title, rank, grade or qualification class;
(3) deprivation of the right to occupy certain positions or engage in certain activities;
(4) community service,

(5) correctional labour;
(6) service restrictions for military servants;
(7) forfeiture of property;
(8) arrest;
(9) limitation of freedom;
(10) custody of military servants in a penal battalion;
(11) deprivation of freedom for a determinate term;
(12) life deprivation of freedom.

Subdivision of punishments into three groups is traditionally saved in the Criminal Code -

primary that are applied independently; additional that can be applied only jointly with the primary ones; to the third group the legislator refers the so-called mixed punishments - those which can be imposed as either primary or additional ones.

Article 52 prescribes that primary punishments shall be community service, correctional labour, service restrictions for military servants, arrest, deprivation of freedom, custody of military servants in a penal battalion, deprivation of freedom for a determinate term, and life deprivation of freedom.

Additional punishments shall be revocation of a military or special title, rank, grade or qualification class, and forfeiture of property.

Fine, revocation of the right to occupy certain positions or engage in certain activities may be imposed as either primary or additional punishments.

Only one primary punishment, as defined in a sanction of an article in the Special Part of this Code, may be imposed for one crime. The primary punishment may be accompanied by one or several additional punishments in cases and manner prescribed by this Code.

Evading the punishment imposed in a judgement of court entails liability pursuant to Articles 389 and 390 of this Code.

Chapter XI - "Imposition of Punishment". This Chapter consists of 9 articles (Articles 65 - 74) and the general principles of imposition of punishments, according to which the court imposes the penalty, established in the sanction of the article of the Special Part of the Criminal Code, that envisages liability for the committed crime dependently on the level of gravity of the committed crime, a guilty person and the circumstances that mitigate or aggravate the punishment, are defined in it.

Except for these general principles imposition of a punishment in the relative articles of this Chapter: the list of circumstances that mitigate the punishment and aggravate

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it is presented, and also some peculiarities of taking them into account (not taking them into account) while imposition of the punishment (Articles 66, 67) are established; peculiarities of imposition of a punishment for an unconsummated crime and the crime committed in complicity (Article 68) are prescribed; circumstances, order and peculiarities of imposition of a milder punishment that that foreseen by the law (Article 69); imposition of a punishment for cumulative crimes and by cumulating sentences is regulated (Articles 70, 71); rules of adding up punishments and merging previous terms are established (Articles 72, 73).

Chapter XII "Discharge from Punishment and from Serving It" consists of 14 articles (Article 74 - 87). Discharge from punishment and from serving it - a separate institute of the General Part of the criminal law. It is an aggregate of norms which in the direction favourable for the sentenced person settle issues on serving/non-serving the punishment, imposed upon him/her due to the verdict of guilty. The majority of norms of this institute is concerned in Chapter XII of the General Part of the Criminal Code. However, significant part of them is also placed in other chapters of the General Part (for example, paragraph 3 Article 19, paragraph 3 Article 57, paragraph 1 Article 58, paragraph 1 Article 62, paragraph 5 Article 72, articles 104-107). Except for that certain peculiarities of discharge from punishment or mitigation of punishment on the grounds of the Law of Ukraine On Amnesty or an act of pardon established by the Law of Ukraine of 1 October 1996 "On Application of Amnesty in Ukraine" and the Regulation on the order of realisation of pardon approved by the Decree of the President of Ukraine from 12 April 2000.

The new Criminal Code envisages the aggregate institute of discharge from serving a sentence but on probation (instead of conditional sentence and determent of execution of a verdict). The legislator refused from the category "especially dangerous recidivist" and also from limitation of right for conditional-preterm discharge from serving the sentence and change of the punishment for a milder one for certain categories of the sentenced.

The institute of discharge from punishment envisages such types of discharge: 1) discharge of a convicted person from punishment for an action, made no longer punishable by law (paragraph 2 Article 74) - in the event when the relative law entered into force before the verdict of guilty is sent for execution (paragraph 6 Article 404); 2) discharge from the imposed punishment of a person who committed a minor crime or medium grave crime if for the time of proceedings he/she is not treated as socially dangerous (paragraph 5 Article 74); 3) discharge from punishment subject to compulsory correctional measures (Article 105); 4) discharge of a person from the imposed punishment due to the expiration of limitation periods (paragraph 5 Article 74, Article 106); 5) discharge from serving a sentence due to expiry of limitation periods for enforcement of judgement (Articles 80, 106 - in the event when up to the end of these terms a person did not serve the sentence at all); 6) discharge from serving a sentence by means of service restrictions, arrest or custody in a penal battalion of military servants, who are found unfit to continue military service due to health problems (paragraph 3 Article 84); 7) amnesty or pardon; 8) in the event of merging the pre-trial detention into the term of punishment if the term of pre-trial detention is relatively long; circumstances that mitigate the punishment are established, and the person of the guilty is not of the significant social danger, the person is imposed a fine as a punishment (paragraph 5 Article 72); 9) discharge of certain persons from serving a sentence but on probation (Articles 75 -78, 104), in particular, for pregnant women and

women having children under seven years of age(Article 79); 10)discharge of persons who committed a crime in the state of jurisdiction, but lapsed, prior to the making of a judgment, into a mental disease from serving a sentence (paragraph 3 Article 19), or into other serious illness which precludes him/her from serving his/her sentence before the actual serving of the imposed punishment(paragraph 2 Article 84).

A number of articles of this Chapter foresees cases of discharge from the further serving of sentence and also of change of the sentence by a milder one.

Chapter XIII "Conviction" consists of 4 articles (Articles 88-91).

Conviction is an special legal status of a person that appears in connection with pronouncement by a court of a verdict of guilty and imposition of a sentence that causes certain unfavourable for the sentenced person consequences, which are not within the framework of the punishment. A person is recognised to be convicted from the day of entry into force of the verdict of guilty and up to cancelling or remitting of the conviction. Conviction has the legal significance in the event of commission of a new crime. When the established by the Criminal Code term is over (Article 89), conviction as a component of the criminal liability is being stopped. The Criminal Code envisages 2 ways of discontinuation of conviction: automatic by means of cancellation (Article 89) and revocation of conviction by the court (Article 91). Cancelled or revoked conviction shall not cause legal consequences. A person conviction is cancelled or revoked by the court when entering into this or that legal relations has the right to declare that he/she is not convicted.

Chapter XIV "Compulsory Medical Measures and Compulsory Treatment".

This Chapter consists of 5 articles. In the Criminal Code of 2001 for the first time there is a chapter devoted to the regulation of application of compulsory medical measures and compulsory treatment as a complex interdepartmental institute. These measures of the State compulsion, being not a punishment, concern rights of people and demand the legal regulation. The compulsory measures of medical character are granting of psychiatric assistance to a person who committed a crime. These are the measures of the State compulsion that are applied to persons who committed a socially dangerous action in the state of non-jurisdiction or in the state of jurisdiction but fall ill before the verdict of guilty or in the process of serving the sentence. The compulsory measures of medical character are applied to the persons who committed a crime in the state of the limited jurisdiction. (Article 93). The compulsory measures of medical character are prescribed by a court with regard of the seriousness of a mental condition, the gravity of an action committed, and the degree to which the offender is dangerous to himself or others:

(1) compulsory outpatient psychiatric assistance;
(2) hospitalisation in a regular-security mental institution;
(3) hospitalisation in a reinforced-security mental institution;
(4) hospitalisation in a high-security mental institution.

The compulsory treatment may be ordered by a court in respect of persons, who committed crimes and have any disease dangerous to the health of others, irrespective of the punishment imposed on them. In case of deprivation of freedom or limitation of freedom, treatment shall be provided at the place of service. In case of any other type of punishment, treatment shall be provided in special treatment institutions (Article 96).

Chapter XV "Specific Features of Criminal Liability and Punishment of Minors".

It is the last Chapter of the General Part of the Criminal Code and contains 12 articles (Articles 97 - 108). In the effective Criminal Code the Chapter XV devoted to minors is introduced. Its norms are to promote the regard of the age, social-psychology, psycho-physical and other peculiarities of the development of minors who committed crimes . It concerns the persons who reached the age of criminal liability (i.e. 16 and in special cases - 14 years of age) but who did not reach the age of 18. In the provisions of this Chapter of the Criminal Code the idea of less severe liability of minors in comparison to that of the grown-ups is being presented. This finds its reflection in the following - such measures of punishment as life long imprisonment and limitation of liberty are not applicable, and arrest and correctional labour are not applicable to minors who did not reach 16 years of age (Article 98), such additional punishment as confiscation is also not applicable. Reaching of the goal of the criminal justice is not always connected with instituting criminal proceedings against a person guilty in commission of a crime, especially it concerns the minors. Commission of a crime by a minor is a circumstance that mitigates punishment. Besides, compulsory measures of educational character are applied to minors.

A minor who committed a minor crime for the first time, may be discharged from criminal liability, provided that his reformation is possible without punishment. In such cases, a court shall impose compulsory reformation measures provided for by paragraph 2 of Article 105 of the Criminal Code upon the minor. A court shall also apply compulsory reformation measures provided for by paragraph 2 of Article 105 of the Criminal Code to a person, who committed a socially dangerous action that is classified as an action provided for by the Special Part of the Criminal Code, before he/she attained the age of criminal liability. Where a minor, who committed a crime, evades compulsory reformation measures, such measures shall be cancelled and he/she shall be criminally prosecuted.

A minor, who has committed a minor or medium grave crime, may be discharged from punishment by a court, if it is found that the punishment may be discontinued due to the minor's genuine repentance and further irreproachable conduct. In this case, the court shall impose the following correctional measures on a minor: (1) warning; (2) restriction of leisure time and special requirements to a minor's conduct; (3) placing a minor under supervision of his (her) parents or foster parents, or school teachers or colleagues upon their consent, or other individuals at their request; (4) obliging a minor, who has attained 15 years of age and possesses any property, money or has any earnings, to compensate any pecuniary damages;

(5) placing a minor in a special educational and correctional institution for children and teenagers until the minor's complete correction but for a term not exceeding three years. Conditions of stay in and procedure of discharge from these institutions shall be provided for by law. A minor may be subjected to several compulsory correctional measures provided for by paragraph 2 of this Article. The duration of compulsory correctional measures provided for by subparagraphs (2) and (3) of paragraph 2 of this Article shall be determined by a sentencing court. A court may also consider it necessary to appoint a tutor for a minor pursuant to the procedures provided for by the law.

Obviously, it seems to be impossible to introduce in the framework of one article all scientific material, which in the whole constitutes the essence of the General Code of Ukraine. Every institute is an extremely interesting part of the criminal law system,

contains a number of problems and debatable issues, some of them are not lightened up and fixed in the Criminal Code, others has not of so-to-say “monosemantic” character. One more aspect of consideration of the Criminal Code that constitutes special interest - practice of its implementation.

Thus, the author is conscious that a great number of extremely important and interesting issues remain behind the borders of this article and expresses her readiness to present them to the concerned reader in the future.

In the whole the target of the author was to introduce to the reader the general analysis of the General Part of the Criminal Code of Ukraine, paying, with regard to the possibility to do it within one article, attention to the scientific commenting of its special provisions, to help the reader to form the general understanding of the presented Part of the new Criminal Code of Ukraine.